



**PATENT APPLICATION**

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

In re application of

Docket No: Q76440

Lieven TRAPPENIERS, et al.

Application. No.: 10/616,980

Group Art Unit: 2155

Confirmation No.: 2865

Examiner: Shawki Saif ISMAIL

Filed: July 11, 2003

For: METHOD, COMPUTER SOFTWARE PRODUCTS, CLIENT TERMINAL, NETWORK  
ELEMENT AND NETWORK FOR EFFICIENT USE OF NETWORK RESOURCES BY  
JUST-IN-TIME MODULATION OF QUALITY OF SERVICE BASED ON SERVICE  
USAGE AND USER BEHAVIOR

**PRE-APPEAL BRIEF REQUEST FOR REVIEW**

**MAIL STOP AF - PATENTS**

Commissioner for Patents

P.O. Box 1450

Alexandria, VA 22313-1450

Sir:

Pursuant to the Pre-Appeal Brief Conference Pilot Program, and further to the  
Examiner's Final Office Action dated July 2, 2007, Applicant files this Pre-Appeal Brief Request  
for Review. This Request is also accompanied by the filing of a Notice of Appeal.

Applicant turns now to the rejections at issue:

***Claim Rejection Under 35 U.S.C. § 102***

Claims 1-12 stand rejected under 35 U.S.C. § 102(b) as allegedly being anticipated by  
U.S. Patent No. 6,208,640 to Spell et al. ("Spell"). Applicant traverses this rejection for at least  
the following reasons.

Claim 1 requires "receiving a user profile from a client terminal, said user profile  
comprising aggregated user behavior information recorded at said client terminal." (emphasis

added.) The Examiner alleges that Spell teaches this element of claim 1, citing col. 10, lines 7-31 of Spell.

The cited portion of Spell, however, states the following:

An administration component 516 can be provided to offer an end user a degree of control over his or her own ISDN usage . . . . A user may, for example, wish to indicate a particular balance between costs and level of service, or may wish to specify that, for example, e-mail messages are to receive top priority regardless of cost.

(Spell at col. 10, lines 7-31.) The quotation above merely appears to teach allowing a user to indicate manual preferences or settings, and clearly does not teach that a user profile could comprise “aggregated user behavior information recorded at said client terminal.” This portion of Spell fails to describe recording or aggregating user behavior information, instead describing specific preferences which a user may separately indicate, for example, for e-mail or other applications. Such preferences or settings are not aggregated, and are not “user behavior information,” as required by claim 1.

Claim 1 further requires “receiving QoS demands from said client terminal, said QoS demands determined based on said user profile.” Since Spell fails to teach “said user profile” as described above, Spell also fails to teach this element of claim 1.

In the Advisory Action issued in response to Applicant’s Response of November 2, 2007, received by Applicant via facsimile on November 29, 2007, the Examiner appears to argue that the Spell reference does teach “aggregated user behavior information” because it allegedly teaches considering actual usage information and user input. Although Spell does appear to receive user preference information from the client terminal, it still does not teach that “user behavior information” is “recorded at said client terminal,” as required by claim 1, for example. (emphasis added.)

Recorded user behavior information is clearly distinguishable from explicit preferences chosen by a user. Furthermore, throughout the present application, and in claim 2, for example, “user preferences” are clearly distinguished from user behavior information; these would unquestionably be understood by one of ordinary skill in the art as substantially different types of information, not only in terms of how they are obtained, but also in terms of what determinations may be made based on the information. For example, although user preferences are by nature generally limited to the preferences a user explicitly indicates, recorded user behavior information does not necessarily require explicit indication by a user, and therefore is likely to much more accurately describe a user’s behavior.

Thus, Spell fails to teach each and every element of claim 1, and therefore fails to anticipate claim 1. Accordingly, Applicant respectfully requests that the rejection of claim 1 and its dependent claims 2-5 and 10-12 be withdrawn.

Independent claims 6, 7, and 9 recite features similar to those of claim 1. Applicant submits, that these claims are, therefore, also patentable at least for reasons analogous to those presented above with regard to claim 1. Accordingly, Applicant respectfully requests that the rejection of independent claims 6, 7, and 9, and dependent claim 8 be withdrawn.

Respectfully submitted,

SUGHRUE MION, PLLC  
Telephone: (202) 293-7060  
Facsimile: (202) 293-7860

WASHINGTON OFFICE

**23373**

CUSTOMER NUMBER

/Kelly G. Hyndman 39,234/  
Kelly G. Hyndman  
Registration No. 39,234

Date: December 3, 2007